

ESTATE OF DENNIS GAIL BEAVER

IBIA 83-3

Decided March 28, 1983

Appeal from a denial of rehearing entered by Administrative Law Judge Keith L. Burrowes in Indian Probate No. IP BI 478B 80.

Settlement accepted.

1. Indian Probate: Compromise Settlements

The Board of Indian Appeals will accept a proposed settlement agreement when it appears that the requirements of 43 CFR 4.207 have been met.

APPEARANCES: Arthur S. Bay, Esq., Oklahoma City, Oklahoma, for appellants; Jack G. Bush, Esq., Oklahoma City, Oklahoma, for appellee. Counsel to the Board: Kathryn A. Lynn.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

On November 1, 1982, the Board of Indian Appeals received a notice of appeal filed by Hubert D. and Nelcine Beaver (appellants), through counsel, Arthur S. Bay, Esq., Oklahoma City, Oklahoma. The notice sought review of an August 31, 1982 order denying rehearing issued by Administrative Law Judge Keith L. Burrowes in the estate of Dennis Gail Beaver (decendent), an unallotted Caddo-Delaware-Shawnee, who died possessed of trust or restricted Indian property on March 16, 1980, at the age of 28. The denial of rehearing let stand a March 16, 1982, order determining heirs in which it was held that decedent's estate should be distributed one-half to his non-Indian surviving spouse, Sue Ellen Beaver (appellee), and one-quarter each to his Indian parents, Hubert D. and Nelcine Beaver.

The trust estate in this case consists of funds in an Individual Indian Money (IIM) account and an undivided one-third interest in 160 acres of land and minerals, described as NE 1/4 of sec. 12, T. 9 N., R. 9 W., of the Indian Meridian, Caddo County, Oklahoma. This property is leased for farming and ranching, and contains a producing oil and gas well.

On April 10, 1980, appellee executed a quit claim deed to her interest in decedent's property. The Administrative Law Judge found that this deed was executed under a mistake as to the rights of a non-Indian to inherit Indian trust land and that, upon learning of this mistake, appellee renounced the deed. Judge Burrowes specifically considered whether there were any grounds for giving effect to the deed, either directly or indirectly, in the context of an Indian probate proceeding. Because he found no such grounds, the Administrative Law Judge held that the deed had no legal effect.

Appellants sought review of the denial of rehearing and both parties filed briefs on appeal. Subsequently, on March 11, 1983, the Board received a proposed settlement agreement, signed by appellee, appellants, and their attorneys. Under the terms of this agreement, appellee is to receive one-half of the funds in decedent's IIM account; one-half of all sums accrued to decedent's estate, but unpaid, as of the date of distribution; and one-half of decedent's interest in the mineral rights in the above-described real property, free of trust. Appellant Hubert D. Beaver is to receive one-quarter of all funds held in decedent's IIM account; one-quarter of decedent's mineral rights in the above-described real property in trust; and one-half of the decedent's interest in the surface of the above-described real property. Appellant Nelcine Beaver will receive equivalent interests to those received by Hubert D. Beaver.

[1] Settlement agreements in Indian probate proceedings are governed by 43 CFR 4.207. That regulation requires three specific findings:

- (1) All parties to the compromise are fully advised as to all material facts;
- (2) All parties to the compromise are fully cognizant of the effect of the compromise upon their rights; and
- (3) It is in the best interest of the parties to settle rather than to continue litigation. 1/

The Board finds that all parties to this proposed settlement are represented by competent counsel and that, through such representation and the decision of the Administrative Law Judge, have been fully advised of all material facts and are fully cognizant of the effect of the settlement upon their rights. Furthermore, it is in the best interest of the parties and to the advantage of the United States to settle this matter and permit the distribution of this estate rather than to continue litigation. The result reached by the parties appears equitable, does not contravene Federal law, and recognizes the interests and legal rights of all parties.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the proposed settlement

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1/ In addition to these three findings, section 4.207(a) requires that settlement agreements be "to the advantage of the United States."

agreement between Sue Ellen Beaver, Hubert D. Beaver, and Nelcine Beaver in the estate of Dennis Gail Beaver is accepted. A copy of this settlement agreement is attached to and incorporated by reference into this decision.

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Wm. Philip Horton  
Chief Administrative Judge

We concur:

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Jerry Muskrat  
Administrative Judge

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Franklin D. Arness  
Administrative Judge

United States Department of the Interior  
Board of Indian Appeals

IN THE MATTER OF THE ESTATE OF )  
DENNIS GAIL BEAVER, DECEASED )  
UNALLOTTED CADDO-DELAWARE-SHAWNEE ) Case No. IBIA-83-3  
OF THE ANADARKO INDIAN AGENCY IN )  
OKLAHOMA )

SETTLEMENT AGREEMENT

This Agreement is made and entered into as of the 4th day of March, 1983, by and between Hubert D. Beaver and Nelcine Beaver, hereinafter called "Appellants", and Sue Ellen Beaver, hereinafter called "Appellee".

Statement of Facts

This matter involves the probate and distribution of the Estate of Dennis Gail Beaver, a deceased Unallotted Caddo-Delaware-Shawnee, who died March 16, 1980. The Deceased was survived by his widow, Sue Ellen Beaver, Appellee, and his parents, Hubert D. Beaver and Nelcine Beaver, Appellants. No children were born of the marriage.

The Estate mainly consists of an undivided one-third (1/3rd) interest in 160 acres of land and minerals in Caddo County, Oklahoma, described as follows:

NE/4 of Section 12, Township 9 North, Range 9 West, of the Indian Meridian,  
Caddo County, Oklahoma.

The surface is leased for farming and ranching purposes. There is a producing oil and gas well on the acreage. Trust funds have accumulated from the income from the land and minerals.

On April 10, 1980, Appellee, Sue Ellen Beaver, executed a Quit Claim Deed attempting to renounce and disclaim all of her right, title and interest in the aforementioned Estate.

On October 21, 1980, a hearing was held before Administrative Law Judge, Keith L. Burrowes, of the United States Department of the Interior, Office of Hearings and

Appeals relative to the attempted disclaimer. Said hearing was continued by Judge Burrowes.

On December 1, 1981, further hearing was held before Judge Burrowes concerning the Estate and Sue Beaver's attempted disclaimer.

On March 16, 1982, Judge Burrowes issued an Order Determining Heirs and distributing the Estate as follows:

Sue Ellen Beaver, non-Indian, wife	1/2
Nelcine Evelyn Beaver, Caddo-Delaware, mother	1/4
Hubert D. Beaver, Caddo-Delaware-Shawnee, father	1/4

A copy of said Order is attached hereto as Exhibit "A."

Subsequent to Judge Burrowes' Order of March 16, 1982, Appellants filed a Petition for Rehearing.

On August 31, 1982, Judge Burrowes denied Appellants' Petition for Rehearing (See Order Denying Petition for Rehearing, a copy of which is attached hereto as Exhibit "B"). Thereafter, Appellants filed Notice of Appeal with the Board of Indian Appeals, appealing Judge Burrowes' Order of August 31, 1982.

On November 29, 1982, Appellants filed suit, Case #C-82-353, District Court of Caddo County, State of Oklahoma, against Appellee requesting that the Court quiet title to the previously described lands in them.

Both Appellants and Appellee have filed Briefs with the Board of Indian Appeals and are awaiting its decision.

#### Terms of Settlement

Appellants and Appellee have agreed to settle their respective claims herein on the following terms and conditions:

1. Sue Ellen Beaver shall receive one-half (1/2) of all sums of cash held in trust by the Anadarko Indian Agency for the heirs of Dennis

Gail Beaver, deceased, and one-half (1/2) of all accrued, but unpaid, sums as of the date of distribution, free of trust.

2. Nelcine Evelyn Beaver shall receive one-fourth (1/4th) interest in all sums of cash held in trust by the Anadarko Indian Agency for the heirs of Dennis Gail Beaver, deceased.
3. Hubert D. Beaver shall receive one-fourth (1/4th) interest in all sums of cash held in trust by the Anadarko Indian Agency for the heirs of Dennis Gail Beaver, deceased.
4. Sue Ellen Beaver shall receive one-half (1/2) of the Deceased's interest in and to the mineral rights underlying the NE/4 of Section 12, Township 9 North, Range 9 West, of the Indian Meridian, Caddo County, Oklahoma, free of trust.
5. Nelcine Evelyn Beaver shall receive one-fourth (1/4th) of the Deceased's interest in and to the mineral rights underlying the NE/4 of Section 12, Township 9 North, Range 9 West, of the Indian Meridian, Caddo County, Oklahoma, to be held in trust.
6. Hubert D. Beaver shall receive one-fourth (1/4th) of the Deceased's interest in and to the mineral rights underlying the NE/4 of Section 12, Township 9 North, Range 9 West, of the Indian Meridian, Caddo County, Oklahoma, to be held in trust.
7. Nelcine Evelyn Beaver shall receive one-half (1/2) of the Deceased's interest in and to the surface of the NE/4 of Section 12, Township 9 North, Range 9 West, of the Indian Meridian, Caddo County, Oklahoma, to be held in trust.
8. Hubert D. Beaver shall receive one-half (1/2) of the Deceased's interest in and to the

surface of the NE/4 of Section 12, Township 9 North, Range 9 West, of the Indian Meridian Caddo County, Oklahoma, to be held in trust.

9. The parties hereto shall promptly execute such conveyances, assignments, acknowledgments and other documents as required to cause the above terms of settlement to be effected.

AGREED TO AND ACCEPTED this 4th day of March, 1983.

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Sue Ellen Beaver

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Nelcine Evelyn Beaver

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Hubert D. Beaver

APPROVED:

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Jack G. Bush  
Attorney for Sue Ellen Beaver

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Arthur S. Bay  
Attorney for Nelcine Evelyn  
Beaver and Hubert D. Beaver

United States Department of Interior  
Board of Indian Appeals

By Wm. Philip Horton, Board Chairman  
Mar. 28, 1983